

Revised Draft

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	)	Civil Action No. 05-cv-00329-TCK-SAJ
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
TYSON FOODS, INC., et al.,	)	Confidentiality Order
	)	
Defendants.	)	

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Whereas, the parties to this action (“parties”), have stipulated that certain discovery material is and should be treated as confidential, and have requested that the court enter a confidentiality order; and whereas the court has determined that the terms set forth herein are appropriate to protect the respective interests of the parties, the public, and the court; accordingly, it is this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, ORDERED:

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1. **Scope.** All documents or items of information produced in the course of discovery, all responses to discovery requests, all deposition testimony and deposition exhibits, and any other materials which may be subject to discovery (hereinafter collectively “documents”) shall be subject to this Order concerning confidential information as set forth below.

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2. **Form and Timing of Designation.** A party may designate documents or other items which are otherwise properly subject to discovery as “Confidential” or “Confidential Attorneys’ Eyes Only” by placing or affixing those words on the documents or items in a manner which will not interfere with the legibility of the documents or items. Documents or other items shall be designated CONFIDENTIAL or CONFIDENTIAL ATTORNEYS’ EYES ONLY prior to, or contemporaneously with, the production or disclosure of the documents. Inadvertent or unintentional production of documents or other items without prior designation as to

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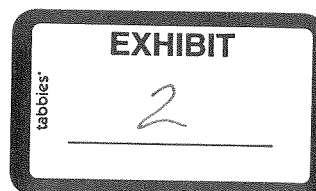
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confidentiality shall not be deemed a waiver, in whole or in part, of the right to later appropriately designate those documents or items as otherwise allowed by this Order.

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Deleted: protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research, development, or commercial information. The certification shall be made concurrently with the disclosure of the documents, using the form attached hereto at Attachment A which shall be executed subject to the standards of Rule 11 of the Federal Rules of Civil Procedure. Information or documents which are available in the public sector may not be designated as confidential

**3. Documents Which May be Designated Confidential or Confidential Attorneys' Eyes Only.** Any party may designate documents or other items which are otherwise properly subject to discovery as CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY but only after review of the documents or items by an attorney, who has, in good faith, determined that the documents or items contain information or material which properly should be considered confidential in nature. The CONFIDENTIAL ATTORNEYS' EYES ONLY designation may be used only for documents or other items which, if disclosed to a competitor, may cause material injury to the disclosing party. Nothing contained herein shall prejudice any party's right to object to any propounded discovery, nor shall anything contained herein be construed as a waiver of any such objection.

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**4. Depositions.** Portions of depositions shall be deemed CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY only if designated as such when the deposition is taken or within seven business days after receipt of the transcript. Such designation shall be specific as to the portions to be protected.

### 5. Protection of Confidential Material.

**a. General Protections.** Documents or other items designated CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY under this Order shall not be used by the parties, their counsel, experts or representatives or any other persons subject to this Order for any purposes whatsoever other than preparing for and conducting the litigation in which the documents or items were disclosed (including any appeal of that litigation). The parties shall not disclose documents designated as confidential to putative class members not

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named as plaintiffs in putative class litigation unless and until one or more classes have been certified.

b. Limited Third Party Disclosures of Confidential Documents and

Items. The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment (in the form set forth at Attachment A hereto), that he or she has read and understands the terms of this Order and is bound by it.

Subject to these requirements, the following categories of persons may be allowed to review documents which have been designated CONFIDENTIAL pursuant to this Order:

(1) outside counsel, in house counsel, and employees of all such  
counsel for the parties who have responsibility for the preparation and trial of the lawsuit;

(2) parties and employees of a party to this Order but only to the  
extent that the party or employee's assistance is necessary to the conduct of the litigation in which the information is disclosed;

(3) court reporters engaged for depositions and those persons, if any,  
specifically engaged for the limited purpose of making photocopies of documents;

(4) consultants, investigators, or experts (hereinafter referred to  
collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit; and

(5) other persons only upon consent of the producing party or upon  
order of the court and on such conditions as are agreed to or ordered.

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c. Limited Disclosure of Confidential Attorneys' Eyes Only Documents

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or Items. The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL ATTORNEYS' EYES ONLY under the terms of this Order to any other person or entity except as set forth in subparagraphs (1), (3), (4), and (5) of paragraph 5(b) above, and then only after the person to whom disclosure is to be made has executed an acknowledgment (in the form set forth at Attachment B hereto), that he or she has read and understands the terms of this Order and is bound by it.

d. Control of Documents. Counsel for the parties shall take reasonable

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efforts to prevent unauthorized disclosure of documents or other items designated as CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY pursuant to the terms of this order. Counsel shall maintain a record of those persons, including employees of counsel, who have reviewed or been given access to the documents or items along with the originals of the forms signed by those persons acknowledging their obligations under this Order.

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e. Copies. All copies, duplicates, extracts, summaries or descriptions

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(hereinafter referred to collectively as "copies"), of documents or other items designated as CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY under this Order or any portion of such a document, shall be immediately affixed with the designation "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY" if such designation does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

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6. Filing of Confidential Materials. In the event a party seeks to file any material

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that is subject to protection under this Order with the court, that party shall take appropriate action to insure that the materials receive proper protection from public disclosure including: (1)

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filing redacted materials with the consent of the party who designated the materials as confidential; (2) where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the materials solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the materials under seal pursuant to the procedural steps set forth in Local Civil Rule 79.1, or such other rule or procedure as may apply in the relevant jurisdiction. Absent extraordinary circumstances making prior consultation impractical or inappropriate, the party seeking to submit the materials to the court shall first consult with counsel for the party who designated the materials as confidential to determine if some measure less restrictive than filing the materials under seal may serve to provide adequate protection. This duty exists irrespective of the duty to consult on the underlying motion. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any materials be filed under seal. The parties understand that materials may be filed under seal only with the permission of the court after proper motion pursuant to Local Civil Rule 79.1.

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**7. Greater Protection of Specific Documents.** No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an Order providing such special protection.

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**8. Challenges to Designation as Confidential.** Any CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY designation is subject to challenge. The following procedures shall apply to any such challenge.

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a. The burden of proving that a designation is unwarranted resides with the party challenging confidentiality.

b. A party who contends that documents or other items designated CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY are not entitled to

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treatment required under this Order for materials so designated shall give written notice to the party who affixed the designation of the specific basis for the challenge. The challenging party will then have fifteen (15) days from service of the written notice to determine if the dispute can be resolved without judicial intervention and, if not, to move for an Order removing the designation.

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c. Notwithstanding any challenge to the designation of documents or other items as CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY, all material previously so designated shall continue to be treated as subject to the full protections of this Order unless one of the following occurs:

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(1) the party who claims that the materials are CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY withdraws such designation in writing; or

(2) the documents as confidential as set forth in paragraph 8.b. above; or

(3) the court rules that the documents should no longer be designated as CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY information.

d. Challenges to the designation of documents or other items as CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY shall be in writing, may be made at any time, and are not waived by the failure to make a written challenge at the time of initial disclosure or designation.

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## 9. Treatment on Conclusion of Litigation.

a. Order Remains in Effect. All provisions of this Order restricting the use of documents designated CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY

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shall continue to be binding after the conclusion of the litigation unless otherwise agreed or ordered.

b. **Return of CONFIDENTIAL Materials.** Within thirty (30) days after the conclusion of the litigation, including conclusion of any appeal, all materials treated as CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY under this Order, including copies as defined above (¶5.d.) shall be returned to the producing party unless: (1) the materials have been entered as evidence or filed (unless introduced or filed under seal); (2) the parties stipulate to destruction in lieu of return; or (3) as to documents containing the notations, summations, or other mental impressions of the receiving party, that party elects destruction. Notwithstanding the above requirements to return or destroy materials, counsel may retain attorney work product including an index which refers or relates to information designated CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY so long as that work product does not duplicate verbatim substantial portions of the text of confidential materials. This work product continues to be protected under the terms of this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose the confidential materials.

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10. **Order Subject to Modification.** This Order shall be subject to modification on motion of any party or any other person who may show an adequate interest in the matter to intervene for purposes of addressing the scope and terms of this Order. The Order shall not, however, be modified until the parties shall have been given notice and an opportunity to be heard on the proposed modification.

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11. **No Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall

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be construed or presented as a judicial determination that any specific document or item of information designated as CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY by counsel is subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as a document-specific or item-specific ruling shall have been made.

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12. **Persons Bound.** This Order shall take effect when entered and shall be binding upon all counsel in this action and their respective law firms and clients.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

\_\_\_\_\_, 2006  
Tulsa, Oklahoma

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ATTACHMENT ACERTIFICATION OF COUNSEL OF DESIGNATION  
OF INFORMATION AS CONFIDENTIALIN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	)	Civil Action No. 05-cv-329-TCK-SAJ
	)	
Plaintiff,	)	
v.	)	
	)	
TYSON FOODS, INC., et al.,	)	Certification by Counsel of Designation
	)	of Information as Confidential
Defendants.	)	

Documents produced herewith [whose bates numbers are listed below (or) which are listed on the attached index] have been marked as CONFIDENTIAL subject to the Confidentiality Order entered in this action which Order is dated \_\_\_\_\_, 2006.

By signing below, I am certifying that I have personally reviewed the marked documents and believe, based on that review, that they are properly subject to protection under the terms of Paragraph 3 of the Confidentiality Order.

Check and complete one of the two options below.

☐ I am a member of the Bar of the United States District Court for the Northern

District of Oklahoma. My District Court Bar number is \_\_\_\_\_.

☐ I am not a member of the Bar of the United States District Court for the Northern

District of Oklahoma but am admitted to the bar of one or more states. The state in which I conduct the majority of my practice is \_\_\_\_\_ where my Bar number is \_\_\_\_\_. I understand that by completing this certification I am

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submitting to the jurisdiction of the United States District Court for the Northern  
District of Oklahoma as to any matter relating to this certification.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Counsel

\_\_\_\_\_  
Printed Name of Counsel

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## ATTACHMENT A

ACKNOWLEDGMENT OF UNDERSTANDING  
AND  
AGREEMENT TO BE BOUNDIN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	)	Civil Action No. <u>05-cv-329-TCK-SAJ</u>
	)	
Plaintiff,	)	
v.	)	
	)	
TYSON FOODS, INC., et al.,	)	Acknowledgment of Understanding
	)	and Agreement to be Bound
Defendants.	)	

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The undersigned hereby acknowledges that he or she has read the Confidentiality Order dated \_\_\_\_\_, 2006, in the above captioned action, understands the terms thereof, and agrees to be bound by such terms. The undersigned submits to the jurisdiction of the United States District Court for the Northern District of Oklahoma in matters relating to the Confidentiality Order and understands that the terms of said Order obligate him/her to use discovery materials designated CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY solely for the purposes of the above-captioned action, and not to disclose any such confidential information to any other person, firm or concern.

The undersigned acknowledges that violation of the Confidentiality Order may result in penalties for contempt of court.

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Name: \_\_\_\_\_  
 Job Title: \_\_\_\_\_  
 Employer: \_\_\_\_\_  
 Business Address: \_\_\_\_\_  
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CERTIFICATION OF COUNSEL OF NEED  
FOR ASSISTANCE OF PARTY/EMPLOYEE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, _____ )	Civil Action No. 05-cv-329-TCK-SAJ
Plaintiff, _____ )	
v. _____ )	
TYSON FOODS, INC., et al., _____ )	Certification by Counsel of Need
Defendants. _____ )	for Assistance of Party / Employee

Pursuant to the Confidentiality Order entered in this action, most particularly the provisions of Paragraph 5.b.2., I certify that the assistance of \_\_\_\_\_ is reasonably necessary to the conduct of this litigation and that this assistance requires the disclosure to this individual of information which has been designated as CONFIDENTIAL.

I have explained the terms of the Confidentiality Order to the individual named above and will obtain his or her signature on an "Acknowledgment of Understanding and Agreement to be Bound" prior to releasing any confidential documents to the named individual and I will release only such confidential documents as are reasonably necessary to the conduct of the litigation.

The individual named above is:

- ☐ A named party;
- ☐ An employee of named party \_\_\_\_\_. This employee's job title is \_\_\_\_\_ and work address is \_\_\_\_\_.

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Date: \_\_\_\_\_

Signature \_\_\_\_\_

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